

AMENDED IN SENATE AUGUST 28, 2006

AMENDED IN SENATE APRIL 18, 2006

Senate Constitutional Amendment

No. 28

Introduced by ~~Senator Ashburn~~ *Senators Ashburn and Migden*

February 24, 2006

Senate Constitutional Amendment No. 28—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 2 of Article XIII A thereof, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SCA 28, as amended, Ashburn. Property tax: new construction exclusion: seismic retrofitting.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change of ownership has occurred. The California Constitution excludes from classification as "new construction" the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following the reconstruction or improvement. Pursuant to an authorization in the California Constitution, existing law excludes from classification as "new construction" the construction or installation in existing buildings of certain seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies.

This measure would modify the definition of the term “newly constructed” to delete the requirement that the reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, be necessary to comply with a local ordinance. This measure would additionally exclude from the definition of “newly constructed” the portion of an existing structure that consists of the construction or reconstruction of seismic retrofitting components, as defined by the Legislature.

This measure states the intent of the Legislature to submit the measure to the voters at the June 3, 2008, statewide primary election.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *Resolved by the Senate, the Assembly concurring,* That the
2 Legislature of the State of California at its 2005–06 Regular
3 Session commencing on the sixth day of December 2004,
4 two-thirds of the membership of each house concurring, hereby
5 proposes to the people of the State of California, that the
6 Constitution of the State be amended as follows:

7 ~~That~~

8 *First—That* Section 2 of Article XIII A thereof is amended to
9 read:

10 SEC. 2. (a) The “full cash value” means the county
11 assessor’s valuation of real property as shown on the 1975–76
12 tax bill under “full cash value” or, thereafter, the appraised value
13 of real property when purchased, newly constructed, or a change
14 in ownership has occurred after the 1975 assessment. All real
15 property not already assessed up to the 1975–76 full cash value
16 may be reassessed to reflect that valuation. For purposes of this
17 section, “newly constructed” does not include real property that
18 is reconstructed after a disaster, as declared by the Governor,
19 where the fair market value of the real property, as reconstructed,
20 is comparable to its fair market value prior to the disaster. For
21 purposes of this section, the term “newly constructed” does not
22 include that portion of an existing structure that consists of the
23 construction or reconstruction of seismic retrofitting components,
24 as defined by the Legislature.

25 However, the Legislature may provide that, under appropriate
26 circumstances and pursuant to definitions and procedures
27 established by the Legislature, any person over the age of 55

1 years who resides in property that is eligible for the homeowner's
2 exemption under subdivision (k) of Section 3 of Article XIII and
3 any implementing legislation may transfer the base year value of
4 the property entitled to exemption, with the adjustments
5 authorized by subdivision (b), to any replacement dwelling of
6 equal or lesser value located within the same county and
7 purchased or newly constructed by that person as his or her
8 principal residence within two years of the sale of the original
9 property. For purposes of this section, "any person over the age
10 of 55 years" includes a married couple one member of which is
11 over the age of 55 years. For purposes of this section,
12 "replacement dwelling" means a building, structure, or other
13 shelter constituting a place of abode, whether real property or
14 personal property, and any land on which it may be situated. For
15 purposes of this section, a two-dwelling unit shall be considered
16 as two separate single-family dwellings. This paragraph shall
17 apply to any replacement dwelling that was purchased or newly
18 constructed on or after November 5, 1986.

19 In addition, the Legislature may authorize each county board of
20 supervisors, after consultation with the local affected agencies
21 within the county's boundaries, to adopt an ordinance making the
22 provisions of this subdivision relating to transfer of base year
23 value also applicable to situations in which the replacement
24 dwellings are located in that county and the original properties
25 are located in another county within this State. For purposes of
26 this paragraph, "local affected agency" means any city, special
27 district, school district, or community college district that
28 receives an annual property tax revenue allocation. This
29 paragraph shall apply to any replacement dwelling that was
30 purchased or newly constructed on or after the date the county
31 adopted the provisions of this subdivision relating to transfer of
32 base year value, but shall not apply to any replacement dwelling
33 that was purchased or newly constructed before November 9,
34 1988.

35 The Legislature may extend the provisions of this subdivision
36 relating to the transfer of base year values from original
37 properties to replacement dwellings of homeowners over the age
38 of 55 years to severely disabled homeowners, but only with
39 respect to those replacement dwellings purchased or newly
40 constructed on or after the effective date of this paragraph.

1 (b) The full cash value base may reflect from year to year the
2 inflationary rate not to exceed 2 percent for any given year or
3 reduction as shown in the consumer price index or comparable
4 data for the area under taxing jurisdiction, or may be reduced to
5 reflect substantial damage, destruction, or other factors causing a
6 decline in value.

7 (c) For purposes of subdivision (a), the Legislature may
8 provide that the term “newly constructed” does not include any
9 of the following:

10 (1) The construction or addition of any active solar energy
11 system.

12 (2) The construction or installation of any fire sprinkler
13 system, other fire extinguishing system, fire detection system, or
14 fire-related egress improvement, as defined by the Legislature,
15 that is constructed or installed after the effective date of this
16 paragraph.

17 (3) The construction, installation, or modification on or after
18 the effective date of this paragraph of any portion or structural
19 component of a single- or multiple-family dwelling that is
20 eligible for the homeowner’s exemption if the construction,
21 installation, or modification is for the purpose of making the
22 dwelling more accessible to a severely disabled person.

23 (4) The construction, installation, removal, or modification on
24 or after the effective date of this paragraph of any portion or
25 structural component of an existing building or structure if the
26 construction, installation, removal, or modification is for the
27 purpose of making the building more accessible to, or more
28 usable by, a disabled person.

29 (d) For purposes of this section, the term “change in
30 ownership” does not include the acquisition of real property as a
31 replacement for comparable property if the person acquiring the
32 real property has been displaced from the property replaced by
33 eminent domain proceedings, by acquisition by a public entity, or
34 governmental action that has resulted in a judgment of inverse
35 condemnation. The real property acquired shall be deemed
36 comparable to the property replaced if it is similar in size, utility,
37 and function, or if it conforms to state regulations defined by the
38 Legislature governing the relocation of persons displaced by
39 governmental actions. The provisions of this subdivision shall be
40 applied to any property acquired after March 1, 1975, but shall

1 affect only those assessments of that property that occur after the
2 provisions of this subdivision take effect.

3 (e) (1) Notwithstanding any other provision of this section,
4 the Legislature shall provide that the base year value of property
5 that is substantially damaged or destroyed by a disaster, as
6 declared by the Governor, may be transferred to comparable
7 property within the same county that is acquired or newly
8 constructed as a replacement for the substantially damaged or
9 destroyed property.

10 (2) Except as provided in paragraph (3), this subdivision shall
11 apply to any comparable replacement property acquired or newly
12 constructed on or after July 1, 1985, and to the determination of
13 base year values for the 1985–86 fiscal year and fiscal years
14 thereafter.

15 (3) In addition to the transfer of base year value of property
16 within the same county that is permitted by paragraph (1), the
17 Legislature may authorize each county board of supervisors to
18 adopt, after consultation with affected local agencies within the
19 county, an ordinance allowing the transfer of the base year value
20 of property that is located within another county in the State and
21 is substantially damaged or destroyed by a disaster, as declared
22 by the Governor, to comparable replacement property of equal or
23 lesser value that is located within the adopting county and is
24 acquired or newly constructed within three years of the
25 substantial damage or destruction of the original property as a
26 replacement for that property. The scope and amount of the
27 benefit provided to a property owner by the transfer of base year
28 value of property pursuant to this paragraph shall not exceed the
29 scope and amount of the benefit provided to a property owner by
30 the transfer of base year value of property pursuant to
31 subdivision (a). For purposes of this paragraph, “affected local
32 agency” means any city, special district, school district, or
33 community college district that receives an annual allocation of
34 ad valorem property tax revenues. This paragraph shall apply to
35 any comparable replacement property that is acquired or newly
36 constructed as a replacement for property substantially damaged
37 or destroyed by a disaster, as declared by the Governor,
38 occurring on or after October 20, 1991, and to the determination
39 of base year values for the 1991–92 fiscal year and fiscal years
40 thereafter.

1 (f) For the purposes of subdivision (e):

2 (1) Property is substantially damaged or destroyed if it
3 sustains physical damage amounting to more than 50 percent of
4 its value immediately before the disaster. Damage includes a
5 diminution in the value of property as a result of restricted access
6 caused by the disaster.

7 (2) Replacement property is comparable to the property
8 substantially damaged or destroyed if it is similar in size, utility,
9 and function to the property that it replaces, and if the fair market
10 value of the acquired property is comparable to the fair market
11 value of the replaced property prior to the disaster.

12 (g) For purposes of subdivision (a), the terms “purchased” and
13 “change in ownership” do not include the purchase or transfer of
14 real property between spouses since March 1, 1975, including,
15 but not limited to, all of the following:

16 (1) Transfers to a trustee for the beneficial use of a spouse, or
17 the surviving spouse of a deceased transferor, or by a trustee of
18 such a trust to the spouse of the trustor.

19 (2) Transfers to a spouse that take effect upon the death of a
20 spouse.

21 (3) Transfers to a spouse or former spouse in connection with
22 a property settlement agreement or decree of dissolution of a
23 marriage or legal separation.

24 (4) The creation, transfer, or termination, solely between
25 spouses, of any coowner’s interest.

26 (5) The distribution of a legal entity’s property to a spouse or
27 former spouse in exchange for the interest of the spouse in the
28 legal entity in connection with a property settlement agreement
29 or a decree of dissolution of a marriage or legal separation.

30 (h) (1) For purposes of subdivision (a), the terms “purchased”
31 and “change in ownership” do not include the purchase or
32 transfer of the principal residence of the transferor in the case of
33 a purchase or transfer between parents and their children, as
34 defined by the Legislature, and the purchase or transfer of the
35 first one million dollars (\$1,000,000) of the full cash value of all
36 other real property between parents and their children, as defined
37 by the Legislature. This subdivision shall apply to both voluntary
38 transfers and transfers resulting from a court order or judicial
39 decree.

1 (2) (A) Subject to subparagraph (B), commencing with
2 purchases or transfers that occur on or after the date upon which
3 the measure adding this paragraph becomes effective, the
4 exclusion established by paragraph (1) also applies to a purchase
5 or transfer of real property between grandparents and their
6 grandchild or grandchildren, as defined by the Legislature, that
7 otherwise qualifies under paragraph (1), if all of the parents of
8 that grandchild or those grandchildren, who qualify as the
9 children of the grandparents, are deceased as of the date of the
10 purchase or transfer.

11 (B) A purchase or transfer of a principal residence shall not be
12 excluded pursuant to subparagraph (A) if the transferee
13 grandchild or grandchildren also received a principal residence,
14 or interest therein, through another purchase or transfer that was
15 excludable pursuant to paragraph (1). The full cash value of any
16 real property, other than a principal residence, that was
17 transferred to the grandchild or grandchildren pursuant to a
18 purchase or transfer that was excludable pursuant to paragraph
19 (1), and the full cash value of a principal residence that fails to
20 qualify for exclusion as a result of the preceding sentence, shall
21 be included in applying, for purposes of subparagraph (A), the
22 one-million-dollar (\$1,000,000) full cash value limit specified in
23 paragraph (1).

24 (i) (1) Notwithstanding any other provision of this section, the
25 Legislature shall provide with respect to a qualified contaminated
26 property, as defined in paragraph (2), that either, but not both, of
27 the following shall apply:

28 (A) (i) Subject to the limitation of clause (ii), the base year
29 value of the qualified contaminated property, as adjusted as
30 authorized by subdivision (b), may be transferred to a
31 replacement property that is acquired or newly constructed as a
32 replacement for the qualified contaminated property, if the
33 replacement real property has a fair market value that is equal to
34 or less than the fair market value of the qualified contaminated
35 property if that property were not contaminated and, except as
36 otherwise provided by this clause, is located within the same
37 county. The base year value of the qualified contaminated
38 property may be transferred to a replacement real property
39 located within another county if the board of supervisors of that
40 other county has, after consultation with the affected local

1 agencies within that county, adopted a resolution authorizing an
2 intercounty transfer of base year value as so described.

3 (ii) This subparagraph applies only to replacement property
4 that is acquired or newly constructed within five years after
5 ownership in the qualified contaminated property is sold or
6 otherwise transferred.

7 (B) In the case in which the remediation of the environmental
8 problems on the qualified contaminated property requires the
9 destruction of, or results in substantial damage to, a structure
10 located on that property, the term “new construction” does not
11 include the repair of a substantially damaged structure, or the
12 construction of a structure replacing a destroyed structure on the
13 qualified contaminated property, performed after the remediation
14 of the environmental problems on that property, provided that the
15 repaired or replacement structure is similar in size, utility, and
16 function to the original structure.

17 (2) For purposes of this subdivision, “qualified contaminated
18 property” means residential or nonresidential real property that is
19 all of the following:

20 (A) In the case of residential real property, rendered
21 uninhabitable, and in the case of nonresidential real property,
22 rendered unusable, as the result of either environmental
23 problems, in the nature of and including, but not limited to, the
24 presence of toxic or hazardous materials, or the remediation of
25 those environmental problems, except where the existence of the
26 environmental problems was known to the owner, or to a related
27 individual or entity as described in paragraph (3), at the time the
28 real property was acquired or constructed. For purposes of this
29 subparagraph, residential real property is “uninhabitable” if that
30 property, as a result of health hazards caused by or associated
31 with the environmental problems, is unfit for human habitation,
32 and nonresidential real property is “unusable” if that property, as
33 a result of health hazards caused by or associated with the
34 environmental problems, is unhealthy and unsuitable for
35 occupancy.

36 (B) Located on a site that has been designated as a toxic or
37 environmental hazard or as an environmental cleanup site by an
38 agency of the State of California or the federal government.

39 (C) Real property that contains a structure or structures
40 thereon prior to the completion of environmental cleanup

1 activities, and that structure or structures are substantially
2 damaged or destroyed as a result of those environmental cleanup
3 activities.

4 (D) Stipulated by the lead governmental agency, with respect
5 to the environmental problems or environmental cleanup of the
6 real property, not to have been rendered uninhabitable or
7 unusable, as applicable, as described in subparagraph (A), by any
8 act or omission in which an owner of that real property
9 participated or acquiesced.

10 (3) It shall be rebuttably presumed that an owner of the real
11 property participated or acquiesced in any act or omission that
12 rendered the real property uninhabitable or unusable, as
13 applicable, if that owner is related to any individual or entity that
14 committed that act or omission in any of the following ways:

15 (A) Is a spouse, parent, child, grandparent, grandchild, or
16 sibling of that individual.

17 (B) Is a corporate parent, subsidiary, or affiliate of that entity.

18 (C) Is an owner of, or has control of, that entity.

19 (D) Is owned or controlled by that entity.

20 If this presumption is not overcome, the owner shall not
21 receive the relief provided for in subparagraph (A) or (B) of
22 paragraph (1). The presumption may be overcome by
23 presentation of satisfactory evidence to the assessor, who shall
24 not be bound by the findings of the lead governmental agency in
25 determining whether the presumption has been overcome.

26 (4) This subdivision applies only to replacement property that
27 is acquired or constructed on or after January 1, 1995, and to
28 property repairs performed on or after that date.

29 (j) Unless specifically provided otherwise, amendments to this
30 section adopted prior to November 1, 1988, shall be effective for
31 changes in ownership that occur, and new construction that is
32 completed, after the effective date of the amendment. Unless
33 specifically provided otherwise, amendments to this section
34 adopted after November 1, 1988, shall be effective for changes in
35 ownership that occur, and new construction that is completed, on
36 or after the effective date of the amendment.

1 *Second—It is the intent of the Legislature that this measure*
2 *shall be submitted to the voters at the June 3, 2008, statewide*
3 *primary election.*

O